

SHAMROCK CARTAGE, INC.
Case 09-CA-219396

Confidential Witness Affidavit

I, Shane Q. Smith, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 64420 State Route 56, Creola, Ohio 45622

My mailing address is P.O. Box 27602, Columbus, Ohio 43227

My cell phone number (including area code) is 614/937-4447

My e-mail address is shanesmith2448@yahoo.com

I was employed by Shamrock Cartage, Inc.

located at 2140 Maxim Drive, Rockdale, IL 60436

Attorney Clement Tsao is present while I give this statement.

I provided an affidavit in Cases 09-CA-204232, 09-CA-295156, and 09-RC-203855 on August 14, 2017. I provided a supplement affidavit in Cases 09-CA-204232, 09-CA-295156, and 09-RC-203855 on September 29, 2017. In these affidavits, I discuss my union activity and prior termination on about August 8, 2017 from Shamrock Cartage. As a result of the Settlement Agreement in these cases, I was reinstated to work at Shamrock in about the first week of November 2017. I was then suspended on Monday, April 9, 2018 and then fired on April 13, 2018. I am not currently working but I have been applying for work. I did not yet file for unemployment but I plan to do so this week.

Privacy Act Statement

The NLRB is asking you for the information on this form on the authority of the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the NLRB in processing representation and/or unfair labor practice cases and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). Additional information about these uses is available at the NLRB website, www.nlr.gov. Providing this information to the NLRB is voluntary. However, if you do not provide the information, the NLRB may refuse to continue processing an unfair labor practice or representation case, or may issue you a subpoena and seek enforcement of the subpoena in federal court.

When I returned to work at Shamrock in November 2017, I worked as a full-time yard spotter. I earned \$16 an hour and worked 48 hours each week, from 7 am to 7 pm I worked four days on, three days off, at 12 hours a day; either Sunday through ~~Thursday~~ ^{Wednesday SS} or Monday through ~~Wednesday~~ ^{Thursday SS}. I had access to health benefits but it was too expensive, so I didn't sign up for it. I was also entitled to receive holiday pay, after a year I was entitled to a year I was entitled to one week's vacation. I was eligible to receive one week's paid vacation as of the date that I was suspended, Monday, April 9. Shamrock has not paid me for my vacation time. About one to two weeks before I was suspended, I spoke to Brian William, site manager, who told me that I would be entitled to receive my one week's paid vacation but I would have been working for one year. Shamrock also had a 401k plan available to employees but I couldn't afford it so didn't participate in it.

Shamrock's job site where I worked is located at Kraft Foods Warehouse at 2842 Speigel Drive, Columbus, Ohio 43085.

About one week before I was suspended on April 9, 2018, site manager at that time, Jason Caccamo, left Shamrock to work for another company. Brian Williamson took over his position about the first week of April 2018. Jason trained Brian for two weeks in March 2018 about how to perform the Site Manager position. Brian Williamson was in the unit before becoming site manager. The site manager reports directly to Shamrock President, Dan O'Brian. Shamrock Vice President is Matt Harper. Harper and O'Brian work out of Illinois.

I am a member of Local 413 and have been for about 18 years. I was shop steward at the time of my suspension/termination in 2018 and had been since November 2017. As of January 2018, the union had begun contract negotiations with Shamrock, after winning a mail ballot election which took place from August 25, 2017 to September 8, 2017. Since January 2018, I

was involved in negotiating the contract by participating in negotiation meetings with Union Business Agent Ted Beardsley. I am still allowed to participate in negotiations even after my termination. Since January 2018, Ted Beardsley and I met with Shamrock about two days in January, two days in February, March was cancelled, and then two days in April that I believe took place before I was fired. Present on behalf of Shamrock during negotiations were employer representative Michael Holmes and attorney Jim Allen, both of whom work for Burdinski & Partners, Inc.

On Monday, April 9, I was driving my yard horse. At about 9-9:30 am, I spoke to Brian Williamson. He was sitting in his personal truck and I was in my yard horse. I believe I was either talking to Brian about work stuff or personal stuff. Shamrock had a new hire named Shane (I don't know his last name) on probation in March 2018. He was only there for a week or two when the doors to a trailer were latched, he was backing up, one of the doors jumped hook, swung around, hit the warehouse door, broke the pins and the door fell off from the trailer. This cost \$480. The damage to the warehouse was between \$2,500-\$3,500 dollars. Our new manager, Brian, talked to one of the owners. They had to report the damage and Shane wasn't suspended or fired. The following week, Shane had three no-call/no-shows and still continued to work. After that, he was hit and miss on his attendance.

While I was talking to Brian I asked him about Shane's damage and no-call/no-shows. I asked him if Shane is allowed to stay employed? Brian said, yea, actually he had 7-8 no-call/no-show and they're still letting him stick around. I then asked Brian about the black fellow named Sean who only worked two days and got mouth at Pepsi. I said he's coming and going. Brian said they're not going to let him come back after two days because he got mouthy with the manager Brian said, with Shane, we're short-handed so we're going to let him stick around until

we get some night people and then we'll cut him loose. Brian said, I've already told the manager that if we have a good worker and someone happens, then I'd gladly bring them back but these other workers who are bad workers, I've decided that when they come back, I won't let them go to the night spots where they came from and I'm going to put them with you. I said, why is that? He said they're bad workers, you guys just met up before in the contract and wouldn't give us any agreed-upon language for progressive discipline yet and we're stuck here yet, I'm just going to put them with you, your big bad union, and your fellow workers on first, shift, you guys deal with the bad apples.

During contract negotiations Thursday/Friday the week before, the Union and company had discussed progressive discipline. Union business agent Ted Beardsley would not agree to a temporary disciplinary system, he wanted to negotiate a full blown progressive discipline policy and the company didn't want to agree to it.

As of April 9, 2018, for about a week, week and a half, the computer system in the truck had been messing up: it would freeze or you had to reboot the system. The system is called PINC and they provide the monitor/computer/power pack and install it in the truck and run software for you and the warehouse inside, which tells you where to put the moves for the trailer.

I went up to Brian Williamson about 12-12:30 pm that day. He was parked in his personal truck and I drove the yard horse over to him. I said, you know the truck has been messing up for a week-week and a half and the old manager, Jason, used to call this number and get their IT person on board, with or without the driver being in the truck to run diagnostics. He said, correct. I said you're the new manager, can you take care of it. Brian said, no, you can take care of it. I said, let me ask once again, you're telling me you don't want to fool with it and I have your permission to do it. Brian said, yes. I said, I don't know how to do it, how do you do

it? He said, on your computer monitor there is a phone number and if it's not there, go look in the other trucks. He said write that number down and when you go to call it, there will be three prompts. He said, you want the IT department option, they'll get on there and will ask you some basic questions, your name, your truck number, your location. I was sitting in the yard horse and Brian was sitting in his person truck. I told him I'm going to go ahead and take lunch and I'll take care of this on lunch so the truck is not down. I pulled up to him and parked beside him. I had not mentioned the issue with the computer to Brian before that day.

I had spoken to other workers about the problem in the truck about the week before. I spoke to Josh Waites and Cody Dunn on separate occasions. I asked them individually if they knew about the truck messing up. They both told me that when it's running, they can use it, when it's down, but they have to pull out our personal smart phone and use the app. I also spoke to new night lead Travis Hamilton about the week before my conversation with Brian about the computer. Hamilton told me he was aware of the issue with the Pinc system.

I then went to work for the next hour and then went on lunch. Between 1:30-2pm I took lunch. I parked the truck and started taking my lunch. I kept my truck running and sat in my truck and called the phone number. I was not paid to take lunch. I called the number, I hit the IT option, and a man named Dave answered the phone. I went off what I was told. I told him my truck's messing up and I need you to do a computer diagnostic Pinc check. He said ok and then asked me questions. He asked for my name, my truck number and my location. I gave him this information. Based on this, Dave was able to locate my truck number, 263, at Kraft. I said, yes. He then continued to do a diagnostic check. I said out of curiosity, we've been waiting for 3-3.5 months about truck 261 to get the new computer system. I said we've had waits before but never like this. He said, I'm well aware of this, let me pull it up. He said I can't help you on this issue

because I'm helping you with your truck. Dave gave me a name and number for the supply chain manager. (I wrote down phone numbers and names on a piece of paper which I will provide to the Board agent.) While Dave was running diagnostic, I heard Dave ask a man about the new system on 261, can you talk to him and update him. A man named Jerry got on the phone, introduced himself as supply and chain manager. He said he has the information on 261. Jerry said about a week ago, he sent out a request letter and invoice to the new manager, Brian, with Shamrock and Joe, manager of DHL supply chain inside the warehouse, regarding this. He said they both contacted him back and said they won't pay for it, they're waiting on an invoice for Kraft so we can give it to you. I said, oh ok. I then said, let me ask you this question, has anybody on Pinc's on your end thought to send an email out to Joe, warehouse manager inside, or Brian, asking you to send updated Kraft contact, names, email, phone number, that way Kraft's aware of what's going on and they can send the invoice to you directly. Jerry said, no, but he can do that. He said, when I get off here, I can send an email out asking for that information. He said, by the way, do you want me ask whether he could talk to me. I said, I don't care. He said, ok, he would send out a new email about that. I said, Jerry, let Dave know, I got to get back to work, I'm off lunch, so I have to get back. I said I don't know if you can still run the diagnostics or now. Jerry said, ok, and then we just hung up.

At 2 pm, I went back to work. Between 5-5:30, Brian called me over on the radio and said, Shane, I need to see you. I drove my truck over to where Brian was parked before. Brian said, well, I want to let you know pertaining to the owners, you are to park the truck, pack up your stuff, and leave the lot, you're suspended pending investigation leading to termination. I said, ok. I said, by the way, why? He just smiled and looked at me and didn't say a word. I asked 5 times, why? What's this about? Brian just looked at me and wouldn't give me an answer.

Finally, I said, does this have anything to do with when you gave me permission and I called about diagnostics and I inquired about 261 and sending an email. He looked at me and said, yes, Joe inside got an updated email with an invoice and I received it and I forwarded it to the owners. He said they had the afternoon to hash over it, all of a sudden the flipped and told me to tell you to get. I said, that's fine, I'll park the truck, get my stuff, get my jumper battery from Chuck, spotter, and get out of here. I said, oh by the way, just to let you know, I am going to be contacting the Union BA and Clement, I will win and get my job back with back pay and I'll see you when I get back. I then left the facility.

I then drove off the lot. I called Dave back and said, hey, you member me with diagnostics. I then went over my conversation I had with him. I then asked him to get Jerry on the phone. I went over with Jerry word for word our conversation. At the end of it, I said, is this pretty much what I said word for word the first time. Jerry said, why did you call be back and hash over it. I said because when we got done talking, you sent that updated email out to both contacts, Joe inside didn't have a problem with it but Brian, our manager, sent it to the owners, they flipped over it and fired me. I said, I'm just going over our conversation to make sure I didn't say or do anything wrong.

I was off on Tuesday and Wednesday, April 10-11, and then on Thursday, April 12, we had a grievance hearing at 9 am. I didn't file a grievance, but we met with the company to discuss my termination. We met at a conference room at the Local 413 Union. Ted Beardsley, Michael Holmes and I were present and Jim Allen was on speakerphone.

Jim and Michael asked me what happened on April 9. They told me they were doing an investigation and asked me questions about what happened on April 9. I told them what I state in my affidavit, above. They showed me a copy of an email that Brian had sent to the owners

forwarding the email from Pinc. They also showed me the billing invoice from Pinc. Ted looked over the documents and said, I see what's here, but I don't think anything wrong. Michael said we're just presenting what we told. Michael said we talked to Brian, manager, and he did not give you permission. I said he did give me permission and not only did he give me permission, he told me how to do it. Ted said I'm just letting you know, you guys already violated the guy's rights two ways – one you can't take a man out of service, suspend, or legally fire someone without telling them why and two the guy was supposed to stay and work until we sit down and have the grievance meeting.

Either Jim or Michael said, I can't recall which one, that if they're going to believe my story, that Brian gave me permission and Brian said he didn't, why would Brian lie? I said there are two major reasons – Brian is already upset and mad about me, right before Jason found out he had a new job and would be training someone, that Jason was allowing first shift workers rotating leaving early. Jason was leaving two or three spotters leave early. Everybody but Brian on first shift got two to four leaves and after I had been passed over for leave and said anyone else on first shift working, if I can't leave early with them, they're not leaving. I said that for three times in a row, Brian wanted to leave early and I was stuck so he got mad about it and held it against me. I said that right after this, Jason got the new job and Brian got the promotion. I said that I believe that Brian held this against me and even Travis Hamilton the new night lead told me to keep myself on the low with good favors with our new manager because he's already mad at you for the attendance issue. I said that Travis told me this a few times during Brian's training period in March 2018. I said the second issue is Brian was a new manager and wanted to protect his job. I don't recall Jim or Michael responding to me other than saying ok and they'd investigate it. Neither Michael nor Jim told me during the meeting why I was fired.

The meeting ended and they said they'd investigate it for 24 hours and get back with us with an answer either way.

On Friday, April 13, sometime in the afternoon probably between 3-6 pm, Michal Holmes called me on my phone a bunch of times. I finally picked up. Michael said he's been trying to get a hold of Ted and to let me know that the owners took the information, talked to Brian, and they decided on termination. I said, basically, you're not able to tell me whether you're investigated rules more in my favor or the company's, but they turned it over to the owners who made a decision. He said, no. I said, so basically what you're unofficially telling me, whether you ruled in my favor or not, since the employers have the final say and they're paying your bill, you have to do what they say. He said, yes. The conversation ended.

Then Ted called me on the phone to discuss. I told Ted about my conversation with Michael and he said he just got off the phone talking to Mike and he said the same thing as you. Ted said he asked about the information that I presented, and Michael did throw out the hint that they felt I contacted Jason on April 9 and got his information and then proceeded on my own. I haven't heard from Shamrock since April 13.

About Tuesday, April 10, I called my old manager Jason Caccamo and asked him how his new job was going. I said, by the way did you hear what happened to me? He said no. I told him what happened. He laughed. He said you'd think they would learn their lesson from the first time and in my opinion, this is a far weaker case this time. Jason said, when I was manager, more than one time, corporate didn't know, they had no business going on so between me and the driver, we handled it ourselves. He said more than often when it happens, the diagnostic truck told him they'd rather have the driver on the phone and deal with it direct than have him in the phone. He said corporate didn't know what was going on because we handled it in house there.

Jason said just to let you know, our two prior spotters, Brian and then Lisa, one or more occasions, when we had equipment problems, they went behind my back and called Shamrock direct or complained to Joe at DHL about problems with equipment and asked him to use his influence to help them to get it done. He said, they did it to me more than once and I never reported it to corporate for going above my head and no one ever got fired or suspended or nothing over it.

Jason said, I think I know why Brian is doing it, because if I had to say it, Brian's doing it what I would do if I was in in his same shoes in the business. He said he's a new manager, in training, and to cover his butt, he's lying for you. He said once you're a manager and know your job and can relax, as long as Brian doesn't have something personally against you, they shouldn't have forwarded to corporate and gotten you fired. He said me and the drivers handled it before and kept corporate out of it. Jason said, in his opinion, if it had been any other worker who had done what you do, it would have been a slap on the wrist but because it was you, and you were fired before, that's why they canned you. Jason told me that if he needed any information to help, he'd be happy to help me out.

On April 17, Jason called me on the phone again. He said he had a quick call with the manager (Brian) but he didn't tell me what they talked about. Jason said he called up the old manager and said Shane called me up and said this was happening. Jason said they had a conversation he didn't tell me what they said. Jason said if I need any assistance from him, he'd gladly do it.

As far as I can tell, my call to Pinc and my suggestion that Pinc send an email didn't cause Shamrock any money and they didn't lose the account.

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5/2/2018

I don't know of anyone else who has called Pinc or diagnostics other than myself.

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of 11 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

Date: May 7, 2018 **Signature:** 
Shane Q. Smith

Signed and sworn to before me on May 7, 2018 **at**

Columbus, Ohio



JAMIE L. IRELAND
Board Agent
National Labor Relations Board